

## RBS and RUS, USDA

## §4280.121

- (i) The contract sum;
  - (ii) The dates for starting and completing the work;
  - (iii) The amount of liquidated damages, if any, to be charged;
  - (iv) The amount, method, and frequency of payment;
  - (v) Surety provisions that meet the requirements of §1780.75(c) of this title;
  - (vi) The requirement that changes or additions must have prior written approval of the Agency;
  - (vii) The warranty period to be provided in accordance with Appendices A and B, sections 1 through 10, paragraph (i) and with Appendices C and D, paragraph (i);
  - (viii) Contract review and concurrence in accordance with §1780.61(b) of this title;
  - (ix) Owner's contractual responsibility in accordance with §1780.68 of this title; and
  - (x) Further contract provisions concerning remedies, termination, surety, equal employment opportunity, anti-kickback, records, State energy conservation plan, change orders, Agency concurrence, retainage, and other compliance requirements must be met in accordance with §1780.75 of this title.
- (4) *Obtaining bids and selecting a contractor.* The applicant may select a contractor based on competitive sealed bids, competitive negotiation, or non-competitive negotiation as described in §1780.72(b), (c), or (d) of this title.
- (5) *Contract award.* Applicants awarding contracts must comply with §1780.70(h) of this title.
- (6) *Contracts awarded prior to applications.* Applicants awarding contracts prior to filing an application must comply with §1780.74 of this title.
- (7) *Contract administration.* Contract administration must comply with §1780.76 of this title. If another authority, such as a Federal or State agency, is providing funding and requires oversight of inspections, change orders, and pay requests, the Agency may accept copies of their reports or forms as meeting oversight requirements of the Agency.

### §4280.120 RES and EEI grantee requirements.

- (a) A Letter of Conditions will be prepared by the Agency, establishing con-

ditions that must be understood and agreed to by the applicant before any obligation of funds can occur. The applicant must sign Form RD 1942-46, "Letter of Intent to Meet Conditions" and Form RD 1940-1, "Request for Obligation of Funds," if they accept the conditions of the grant.

(b) The applicant must complete, sign, and return the Form RD 4280-2. The grantee must abide by all requirements contained in Form RD 4280-2, this subpart, and any other applicable Federal statutes or regulations. Failure to follow these requirements may result in termination of the grant and adoption of other available remedies.

(c) Where applicable, the grantee shall provide to the Agency a copy of the executed power purchase agreement within 12 months from the date that the grant agreement is executed, unless otherwise approved by the Agency.

### §4280.121 Servicing grants.

(a) *General.* RES and EEI grants will be serviced in accordance with the Departmental Regulations, 7 CFR part 1951, subparts E and O of this title, and Form RD 4280-2.

(b) *Change of contractor or vendor.* After an award has been made, the recipient of the award can request to change a contractor or vendor if the technical merit score for the project remains the same or is higher. Prior to changing a contractor or vendor, the recipient must submit to the Agency a written request providing information that allows the Agency to re-score the project's technical merit. If the Agency determines that the project achieves the same or higher technical merit score, the recipient may make the change. No additional funding will be available from the Agency if costs for the project have increased. If the Agency determines that the project does not achieve the same or higher technical merit score, the change will not be approved.

## § 4280.122

## 7 CFR Ch. XLII (1–1–14 Edition)

### RENEWABLE ENERGY SYSTEM AND ENERGY EFFICIENCY IMPROVEMENT GUARANTEED LOANS

#### § 4280.122 Borrower eligibility.

To receive a RES or EEI guaranteed loan under this subpart, a borrower must meet the criteria specified in §§ 4280.109 and 4280.112.

#### § 4280.123 Project eligibility.

For a RES or EEI project to be eligible to receive a guaranteed loan under this subpart, the project must meet each of the criteria, as applicable, specified in § 4280.113(a) through (j). In addition, guaranteed loan funds may be used for necessary capital improvements to an existing renewable energy system.

#### § 4280.124 Guaranteed loan funding.

(a) The amount of the loan that will be made available to an eligible project under this subpart will not exceed 75 percent of total eligible project costs. Eligible project costs are specified in paragraph (e) of this section.

(b) The minimum amount of a guaranteed loan made to a borrower will be \$5,000, less any program grant amounts. The maximum amount of a guaranteed loan made to a borrower is \$25 million.

(c) The percentage of guarantee, up to the maximum allowed by this section, will be negotiated between the lender and the Agency. The maximum percentage of guarantee is 85 percent for loans of \$600,000 or less; 80 percent for loans greater than \$600,000 up to and including \$5 million; 70 percent for loans greater than \$5 million up to and including \$10 million; and 60 percent for loans greater than \$10 million.

(d) The total amount of the loans guaranteed by the Agency under this program to one borrower, including the outstanding principal and interest balance of any existing loans guaranteed by the Agency under this program, and new loan request, must not exceed \$25 million.

(e) Eligible project costs are only those costs associated with the items identified in paragraphs (e)(1) through (e)(12) of this section, as long as the items are an integral and necessary part of the renewable energy system or energy efficiency improvement.

(1) Post-application purchase and installation of equipment (new, refurbished, or remanufactured), except agricultural tillage equipment, used equipment, and vehicles.

(2) Post-application construction or improvements, except residential.

(3) Energy audits or assessments.

(4) Permit and license fees.

(5) Professional service fees, except for application preparation.

(6) Feasibility studies and technical reports.

(7) Business plans.

(8) Retrofitting.

(9) Construction of a new energy efficient facility only when the facility is used for the same purpose, is approximately the same size, and, based on the energy assessment or audit, will provide more energy savings than improving an existing facility. Only costs identified in the energy assessment or audit for energy efficiency improvements are allowed.

(10) Energy efficiency improvements are limited to only improvements identified in the energy assessment or audit. Equipment identified by the audit to be replaced shall be replaced with equipment similar in capacity. If the energy efficiency improvement has a greater capacity than the existing equipment, the Agency will pro-rate the energy efficiency improvement's total eligible project costs based on the capacity of the existing equipment. A calculation shall be performed by dividing the capacity of the existing equipment by the capacity of the proposed equipment to determine the percentage of the energy efficiency improvement's eligible project costs that the Agency will use in determining the maximum guaranteed loan assistance under this subpart (see example).

Example. A business plans to build a new production line with a capacity of 625 units per hour to replace an existing production line that produces 500 units per hour. The total project costs of the new production line is \$20,000, of which \$15,000 would otherwise qualify as eligible project costs. However, because the new production line has a greater production capacity than the existing line (625 units per hour versus 500 units per hour), only a portion of the \$15,000 otherwise eligible project